



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

May 3, 1957.

Honorable John H. Winters
Executive Director
State Department of
Public Welfare
Austin 14, Texas.

Opinion No. WW-116

Re: Whether the Department
of Public Welfare may
legally refund to the
International Church of
The Four-Square Gospel
the sum of \$45.00,
which represents an
assessment which was
collected and deposited
in the Commodity Dis-
tribution Fund in the
State Treasury through
error.

Dear Mr. Winters:

You have requested our opinion concerning whether the Department of Public Welfare may legally refund assessments erroneously collected and deposited in the State Treasury under the facts submitted. You state in your request that, pursuant to the provisions of House Bill 441, Acts of the 53rd Legislature, Regular Session, 1953, Chapter 305, page 757, codified in Vernon's as Article 695c, Section 7-A, Vernon's Civil Statutes, the sum of Forty-five (\$45.00) Dollars was collected from the International Church of the Four-Square Gospel in Dallas, Texas. It subsequently developed that the Church was ineligible for commodities and, therefore, the money collected and deposited in the State Treasury had not been due to the Department of Public Welfare. The Department of Public Welfare approved a purchase voucher authorizing payment of a refund of the Forty-five (\$45.00) Dollars, which refund was rejected by the Comptroller of Public Accounts.

Section 7-A of Article 695c, provides in part:

"It is further provided that the money to be assessed shall be paid to the State Department of Public Welfare and shall be used for no other purposes except for the necessary economic operation of the Program subject to rules and regulations which may be established by the State Department of Public Welfare, by the provisions

of this Act, and by the provisions of the general appropriation Acts of the Legislature. The funds received by the State Department of Public Welfare shall be deposited in a separate account in the State Treasury, and shall be subject to withdrawals upon authorization by the Executive Director of said Department"(Emphasis ours)

Section 6 of Article VIII of the Constitution of Texas provides:

"No money shall be drawn from the Treasury but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years, except by the first Legislature to assemble under this Constitution, which may make the necessary appropriations to carry on the government until the assemblage of the sixteenth Legislature."

By virtue of the provisions of Section 6 of Article VIII of the Constitution of Texas, above quoted, money not specifically appropriated by the Legislature cannot be withdrawn from the Treasury. Pickle v. Finley, 91 Tex. 484, 44 S.W. 480 (1898); Lightfoot v. Lane, 104 Tex. 447, 140 S.W. 89 (1911); State v. Snyder, 66 Tex. 687, 13 S.W. 106 (1886); Attorney General's Opinion WW-102.

In State v. Snyder, supra, the court stated:

"The constitution provides that 'no money shall be drawn from the treasury but in pursuance of specific appropriation made by law'. As was said in Treasurer v. Wygall, 46 Tex. 465: 'The key that unlocks the state treasury is an act of the legislature, directing the thing to be done which is demanded, and not the judgment of a court, founded on equitable consideration, reaching beyond and changing the terms of the law in the disposition of property.'"

Since Section 7-A of Article 695c required the assessments collected to be deposited in the State Treasury and does not provide for a refund of such assessments and since there is no available appropriation for the payment of refunds, you are advised that the Department of Public Welfare is not authorized to refund the money collected and deposited in the State Treasury as outlined in your request.

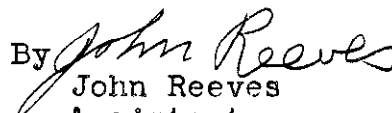
SUMMARY

The Department of Public Welfare cannot legally refund an assessment which was collected and deposited in the State Treasury pursuant to the provisions of Section 7-A of Article 695c of Vernon's Civil Statutes since Article 695c does not authorize the refund of such assessments and there is no available appropriation for the payment of such refund, even though the assessment was collected through error. Section 6, Article VIII of the Constitution of Texas; Pickle v. Finley, 91 Tex. 484, 44 S.W. 480 (1898); Lightfoot v. Lane, 104 Tex. 447, 140 S.W. 89 (1911); State v. Snyder, 66 Tex. 687, 18 S.W. 106 (1886); Attorney General's Opinion WW-102.

Yours very truly,

WILL WILSON

Attorney General of Texas

By 
John Reeves
Assistant

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APPROVED:

OPINION COMMITTEE

H. Grady Chandler, Chairman
Elbert M. Morrow
Mrs. Marietta Payne
Riley Eugene Fletcher

REVIEWED FOR THE ATTORNEY GENERAL
BY:

Geo. P. Blackburn